



**Request for City Council Committee Action
From the City Attorney's Office**

Date: June 11, 2003
To: Public Safety & Regulatory Services Committee
Referral to:

Subject: Nuisance Night Court Update

Recommendation: That the City Council receive and file this report.

Prepared by: Erik Nilsson Phone: 673-2192

Approved by: _____
Jay M. Heffern
City Attorney

Presenter in Committee: None

Financial Impact (Check those that apply)

- ☐ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☒ Other financial impact (Explain): Costs related to creation of a court to handle livability offenses may include personnel costs, space costs, overtime costs, overhead, supplies, etc.
- ☐ Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

Neighborhood Notification N/A
City Goals: Build communities where all people feel safe and trust the City's public safety professionals and systems; Promote public, community, and private partnerships to address disparities and to support strong, healthy families and communities.
Comprehensive Plan N/A
Zoning Code N/A
Other N/A

Background/Supporting Information See attached material.

REPORT TO PUBLIC SAFETY & REGULATORY SERVICES COMMITTEE ON NUISANCE NIGHT COURT PROPOSAL

June 11, 2003

BACKGROUND

On April 9, 2003, this Committee directed the City Attorney's Office to "work with the Minneapolis Police Department, in consultation with the chief judge of Hennepin County District Court (and other court resources), and others to explore the possibility of creating a nuisance night court, and the feasibility of piloting this program during the summer of 2003." The City Attorney's Office was further directed to report back to this Committee on May 7, 2003.

On May 7, 2003, the City Attorney's Office presented a report to this Committee that outlined the court options available to the City to address livability offenses. Based on a "best practices" analysis of the Midtown Manhattan Community Court and the Philadelphia Nuisance Night Court, the report recommended further study of two main models: 1) Same Day/Night Court and/or 2) Next Day Court.

This Committee then directed staff to move "aggressively forward, with the City Attorney's Office being the coordinator of the project." The Committee action included a reporting schedule encompassing the next three meeting cycles as follows:

1. One cycle-May 21: The CCP/SAFE Team shall provide information through the City Attorney's Office for the Committee to decide on a geographic area to use for a pilot project.
2. Two cycles-June 11: Committee to receive a written update from the City Attorney's Office in terms of the stakeholders' involvement (i.e. the courts being a partner, possible location for the court, resource needs and demands on the various departments).
3. Three cycles-June 25: Staff to provide in person update looking at the specific things that would need to be done in order to implement the project this summer.

On May 21, 2003, the City Attorney's Office and CCP/SAFE presented a report, which outlined the type, incidence, and location of livability offenses occurring within the City in order to provide guidance to the Committee in selecting a geographic area to use for a pilot project. At a special meeting of the Public Safety & Regulatory Services Committee on June 2, 2003, the Committee "identified Downtown as the geographic area for a Pilot Project."

Following is an update on the City Attorney's Office's efforts to gauge stakeholders' involvement in the Nuisance Night Court proposal.

UPDATE

It is extremely difficult to provide specific information on stakeholder involvement at this early stage. This difficulty is due in part to the hypothetical nature of the Nuisance Night Court proposal at this time and the inability of stakeholders to commit specific resources in light of budgetary constraints. Nevertheless, the City Attorney's Office is in the process of identifying potential resources through a general comparison of the Philadelphia model and the Hennepin County out of custody misdemeanor ("OCM") arraignment calendar. The two main categories of required stakeholder involvement appear to be 1) courtroom staffing and 2) facilities (space) and equipment needs.

STAFFING-PERSONNEL REQUIREMENTS

The Nuisance Night Court in Philadelphia is staffed by a volunteer judge and by court staff who are paid through grant money. This program involves holding court in police precincts, usually from 10:00 p.m. until the early morning hours. The matters heard are "summary" offenses, payable by fines only. The advantage to the court hearing only summary offenses lies in the fact that the defendant is not subject to jail time and, therefore, is not eligible to have an attorney appointed. This eliminates the need for attorneys to participate in the process. Most offenders plead guilty. For those who demand a trial, the trial is held on the spot and presided over by the judge. The arresting officer and other witnesses present the case against the defendant. Penalties imposed when someone pleads guilty or is found guilty include fines and costs and/or community service.

Since the specific contours of the Nuisance Night Court proposal have yet to be determined, we believe that a general assessment of staffing needs can best be made by referring to the Philadelphia model and the current Hennepin County out of custody misdemeanor ("OCM") calendar. The morning arraignment calendar is conducted each day in courtroom 1156 of the Hennepin County Government Center. The primary difference between the system in place in Hennepin County and the Philadelphia Nuisance Night Court is that the "livability" offenses that the City Attorney's Office prosecutes are primarily misdemeanors. The "summary" offenses in Philadelphia are the equivalent of our petty misdemeanor offenses. This means that without decriminalization of these misdemeanor offenses, an offender has the right to have an attorney represent him or her at all stages of the proceedings. The information provided regarding the OCM calendar (attached hereto), therefore, reflects the participation of attorneys. It is important to note that these figures are estimates, based on current OCM courtroom procedures.

Based on the figures provided, the total estimated annual cost of the OCM calendar is approximately \$516,294 (based on 1 FT probation officer; did not include STS crew leads figure of \$100,000) for a calendar that is staffed five days per week. Since a same day/night court model involves considerably less personnel, this figure reflects an upper cap amount indicative of current district court staffing. In addition, since a same day/night court would likely be held only on weekend evenings when the majority of livability offenses are committed, the actual operating costs would be considerably less than the OCM figure provided.

There are also additional cost considerations related to the Police Department that are not reflected on the chart. Although it is difficult to provide a monetary figure, it is anticipated that police officers would issue citations and/or make arrests during their regularly scheduled work hours and would not require additional personnel or overtime. However, there is a time "cost" involved because the officer's appearance is required in court to testify to the commission of the

offense. Philadelphia estimates that the police officers usually spend 20-30 minutes on-site for each court appearance. The figures provided for other City departments may also not require the allocation of new monies, since a shift of current personnel may potentially fulfill the staffing requirements. For example, the figure provided for the City Attorney's Office would likely not require additional staff above the current budget allocation because a current Assistant City Attorney could staff the same day/night court as part of their regular work schedule, after an adjustment in work hours, if necessary.

However, actual cost savings could be realized by reducing the number of personnel involved. Since the majority of "livability" offenses are misdemeanors in Minnesota, attorney presence would be needed. However, by decriminalizing some or all of these offenses, the same day/night court or next day court could proceed much as it does in Philadelphia with only a judge, clerk(s), STS staff, police, other witnesses, and security personnel. Neither public defenders nor sheriff's deputies would be needed. Changing these livability offenses from misdemeanors to petty misdemeanors would require legislative action by the Minneapolis City Council in the case of ordinance violations and the Minnesota state legislature in the case of state law.

MINNESOTA LAW

While we remain convinced that same day/night court or next day court model is needed to address livability offenses in Minneapolis, we want to be cautious about the difficulties we face in instituting such a court. Under current Minnesota law, it would be extremely difficult to implement the specific features of the Philadelphia model in practice.

In Philadelphia, a police officer immediately escorts the individual to the Nuisance Night Court location upon commission of the alleged "summary" offense. Minnesota law, however, severely restricts the ability of the police to effectuate an arrest in certain misdemeanor and all petty misdemeanor situations. Pursuant to Minn. Stat. § 629.34, a police officer may arrest a person without a warrant when a public offense, including a misdemeanor, has been committed or attempted in the officer's presence. Minn. Stat. § 629.34, subd. 1(c)(1); Smith v. Hubbard, 253 Minn. 215, 220, 91 N.W.2d 756, 761 (1958) (inclusion of misdemeanors in definition of "public offense"). In general, law enforcement officers issue citations to people subject to lawful arrest for misdemeanors, unless it reasonably appears that: (1) arrest or detention is necessary to prevent bodily harm to the accused or another or to prevent further criminal conduct; or (2) there is a substantial likelihood that the accused will fail to respond to a citation. Minn. R. Crim. P. 6.01, subd. 1(1)(a) ("Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued."); see State v. Richmond, 602 N.W.2d 647 (Minn. Ct. App. 1999) (police lacked probable cause to arrest defendant they observed making illegal left-turn from right lane of traffic where there was no evidence that arrest of defendant was necessary to prevent bodily harm or further criminal conduct, or that defendant would likely fail to respond to traffic citation).

Although Minnesota law favors issuance of a citation to individuals subject to lawful arrest for misdemeanors, it is abundantly clear that a police officer may not make a custodial arrest based only on a petty misdemeanor. State v. Carver, 577 N.W.2d 245, 250 (Minn. Ct. App. 1998); see State v. Martin, 253 N.W.2d 404, 406 (Minn. 1977) (holding that an arrest for possession of marijuana was illegal because possession was a petty misdemeanor); see also State v. Hanson, 364 N.W.2d 786, 789 (Minn. 1985) (holding that possession of a single marijuana cigarette is a petty misdemeanor which ordinarily does not justify custodial arrest). The ability of the police

officer to detain an offender and escort that individual to night court, therefore, is severely limited in many misdemeanor situations and not allowed in the case of petty misdemeanors.

If current misdemeanor livability offenses are reduced to petty misdemeanors, therefore, the City Attorney's Office would develop an alternative to the police officer immediately escorting the individual to court. One solution might be to develop a citation that would specify a court date to be held that same evening or the next day. It must be noted, however, that this may not address the issue of individuals not appearing for court. Even if decriminalization of these offenses does not occur, it remains questionable in many misdemeanor situations whether a police officer could immediately transport an individual to the night court location.

LOCATION-FACILITIES

The primary considerations with regard to the location of a Nuisance Night Court include distance from or within the identified geographic area for the pilot project and the cost involved. The City Attorney's Office has discussed potential locations with the various stakeholders. The potential locations include the Hennepin County Government Center, the Public Safety Facility, the various police precincts, and the former "Juvenile Unit" of the Police Department, located in City Hall. An advantage to a property managed by the Municipal Building Commission ("MBC"), such as City Hall, is that it could be used at no charge pending appropriate approval by the MBC Board.

Estimated annual costs of a same day/night court model (half-day calendar) based on current OCM staffing and functions:

Court Staff	\$175,000 for courtroom clerk (.5), clerk in courtroom to set up time pays (.5), PD eligibility clerk (.5), clerk to act as receptionist, answer phones and receipt payments (.5), clerk to prepare, assemble, and update calendar (1.0), and a backup clerk (.5)
Corrections	<p>\$64,000 – 2 part time Community Corrections Specialists for STS</p> <p>\$33,000-132,000 – depending on needs and requests, 1-4 probation officers to do record checks, assessments, referrals, etc. (66,532 1 FT probation officer)</p> <p>[\$100,000 – 2 STS crew leads <i>if</i> increase number persons on STS]</p>
Public Defender:	\$53,000 – 1 part time PD (<i>estimate from Dreissen's Suburban Cost Memo</i>)
Sheriff Deputy:	\$34,000 – 1 part time deputy
City Attorney:	\$81,762 – 1 FT City Attorney I + criminal division law clerk*
Overhead:	\$42,000 for 2 part time security guards (offsite location may result in increased costs)

* The City Attorney's Office will use current staff and not new staff for this initiative.